# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

SHIRLEY MARTIN Claimant	}
VS.	Docket No. 190 106
HERITAGE FLOWERS	Docket No. 189,196
Respondent AND	
KANSAS WORKERS COMPENSATION FUND	}

# ORDER

**ON** the 6th day of October, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of a Preliminary Hearing Order entered by Administrative Law Judge George R. Robertson, dated August 12, 1994, came on for oral argument.

#### **APPEARANCES**

The claimant appeared by and through her attorney Stanley R. Juhnke of Hutchinson, Kansas. The respondent, an uninsured, appeared by and through its attorney Jeffrey E. King of Salina, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney Cinda S. Norberg of Hutchinson, Kansas. There were no other appearances.

# RECORD

The record considered by the Appeals Board is the same as that set forth in the Preliminary Hearing Order of the Administrative Law Judge including the transcript of Preliminary Hearing held August 11, 1994, and the exhibits attached thereto.

# **ISSUES**

The Administrative Law Judge denied claimant's request for medical care and treatment for injuries allegedly sustained while working for the respondent. The claimant requests the Appeals Board to review that finding. The issue before the Appeals Board is whether claimant sustained personal injury by accident arising out of and in the course of her employment with respondent.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, for preliminary hearing purposes, the Appeals Board finds, as follows:

Claimant has proven that she has sustained aggravation to her left upper extremity as a result of her work activities for the respondent, Heritage Flowers. Based upon the evidence presented to date, claimant has failed to prove that she has experienced injury or aggravation to her right upper extremity. This case should be remanded to the

Administrative Law Judge for further findings pertaining to the liability of the Kansas Workers Compensation Fund for payment of benefits.

Claimant's testimony, coupled with the medical notes of Dr. Michael P. Estivo, indicates that claimant's left upper extremity has been aggravated to some extent by her work at Heritage Flowers. Whether the aggravation is temporary or permanent, as well as the extent of aggravation, is yet to be determined.

#### AWARD

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that, for preliminary hearing purposes, claimant is entitled benefits under the Workers Compensation Act, including medical care and treatment, for aggravation and injury to her left upper extremity as a result of her work activities at the respondent, Heritage Flowers; that this case should be, and hereby is, remanded to the Administrative Law Judge for determination of liability of the Kansas Workers Compensation Fund, and for such other proceedings as the parties may require.

IT IS SO ORDERED.
Dated this day of October, 1994.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Stanley R. Juhnke, PO Box 567, Hutchinson, KS 67504 Jeffrey E. King, PO Box 1247, Salina, KS 67402 Cinda S. Norberg, PO Box 2977, Hutchinson, KS 67504 George R. Robertson, Administrative Law Judge George Gomez, Director